THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.21665 OF 2006

DATED: 22-01-2007

BETWEEN

G. Pullaiah, S/o. Ramulu, Occ: Tailor, R/o. I Floor,
4-4-22, Hayath Nagar, R.R. District and others.

...PETITIONERS

AND

The State of A.P., through S.H.O of Police
Station Hayath Nagar, R.R. District and another.

...RESPONDENTS

ORDER:

This writ petition has been filed seeking a Writ of Mandamus to declare the complaint in P.R.C.No.39 of 2006 on the file of the VII Metropolitan Magistrate at Cyberabad at Hyderabad as illegal and arbitrary.

2. Heard the learned counsel for the petitioners as well the learned Government Pleader for Home.

3. It is the case of the first petitioner that he filed a suit in O.S.No.232 of 2005 on the file of the I Additional District Judge, Ranga Reddy District, Hyderabad against one Polisetti Vijay Kumar, who is the original owner of the house bearing No.4-4-22 (Old No.4-4-6), Hayath Nagar, Ranga Reddy, for specific performance of agreement of sale dated 13.07.2001 to sell the unfinished house. It is stated that he agreed to purchase the said house and he himself constructed the unfinished portion and he is in occupation and enjoyment of the same. It is stated that pursuant to the agreement of sale as

the total consideration of Rs.10,60,000/- has been paid, the aforesaid suit was decreed in his favour. It is further stated that he alone is the owner of the said house and earlier to him his vendor, Polisetti Vijay Kumar was the owner but without reflecting the true facts, one N. Mallesh, the second respondent herein filed a private complaint before the VII Metropolitan Magistrate, Cyberabad alleging that the said house belongs to one Chalapathi Rao and that he is the watchman of the said premises and that the petitioners herein have scolded the complainant attracting the offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989 (for short 'the Act'). It is further stated that the learned Magistrate without referring the matter for investigation by the concerned Assistant Commissioner of Police, took cognizance and issued warrants. Questioning the said action this writ petition has been filed to quash the proceedings in P.R.C.No.39 of 2006.

4. I am not inclined to express any opinion on the merits of the case as regards to the ownership or the alleged offence said to have been committed by the petitioners; as regards the averments of the complainant as to whether he is the watchman and whether Chalapathi Rao is the owner of the said house, as all those allegations have to be enquired into either by the concerned investigation officer or during the course of trial by the learned Magistrate. However, keeping in view the judgment dated 21.04.2006 passed in O.S.No.232 of 2005 in favour of the petitioner, which *prima facie* goes to show that the petitioner is having right over the said property, it may not be just and proper to arrest the petitioner in respect of the aforesaid PRC, moreover, it is stated that the first and fourth petitioners were arrested and they obtained regular bail.

5. Accordingly, the petitioners 2 and 3 are directed to surrender before the I Additional Sessions Judge, Ranga Reddy, which is a special designated Court under the Act and on such surrender the learned Sessions Judge may release them on bail on conditions that may be imposed by him.

With the aforesaid observations the writ petition is accordingly disposed of. There shall be no order as to costs.

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V. ESWARAIAH, J

January 22, 2007
Note: Furnish C.C. of the order in two days
(**B**/**o**)
DSK